

FRONT LINE

May 1998

OFFICE OF MISSOURI ATTORNEY GENERAL

Vol. 5, No. 3

LEGISLATIVE UPDATE



Several measures that would affect the law enforcement community have been approved by the Legislature, including House Bill 1147, a comprehensive meth-fighting measure that has been signed by the governor. It takes effect Aug. 28. **A legislative roundup is on pages 2-4.**

Drug Strike Force created

A Drug Prosecution Strike Force housed in the AG's Office will assist prosecutors and law enforcement agencies in the drug fight.

MEASURES SUPPORTED by the Attorney General's Office and signed by the governor will better equip law enforcement officers in their fight against the production and possession of methamphetamines.

This comprehensive measure, House Bill 1147, along with funding for a new Drug Prosecution Strike Force, will provide the tools to effectively fight drugs.

The Strike Force, which will focus on meth prosecutions, will employ four skilled prosecutors to assist local prosecutors, law enforcement agencies and regional drug task forces in the detection, eradication and prosecution of meth producers. The Strike Force will be housed in the AG's Office

"The Strike Force will not replace existing efforts by law enforcement and local prosecutors to stop meth production," said Attorney General **Jay Nixon**. "Instead, the Strike Force will work cooperatively with local and state officials, combining

resources to more quickly end this proliferation of meth."

The Strike Force team, now being assembled by Nixon, will offer training in areas such as search and seizure and detection.

It also will assist in prosecuting "attempt to manufacture" cases where the defendants have chemicals and equipment, but have not yet produced meth at the time of arrest.

"These cases can be very difficult to prosecute, but the Strike Force will be ready to offer full assistance to local agencies," Nixon said.

The Strike Force should be fully operational by July, but agencies can now contact the office if immediate assistance is needed. Questions or requests should be directed to **Ted Bruce**, deputy chief counsel of the Criminal Division at 573-751-0782.

The next issue of Front Line Report will profile the prosecutors and officials on the Strike Force.

HB 1147 PROVISIONS

■ **Stiffer penalties:** A meth trafficker dealing smaller amounts will be subject to enhanced penalties. Traffickers caught with more than 30 grams but less than 90 grams of meth commit a Class A felony. For greater quantities, the penalty is life in prison without probation or parole. A person who possesses more than 30 grams of meth commits a Class B felony. Those possessing 90 grams or more commit a Class A felony. A person who possesses paraphernalia with the intent to produce meth commits a Class D felony.

■ **Drug treatment/drug courts:** Circuit courts are authorized to establish a fast-track drug court to give top priority to drug-related cases. This will quickly take drug dealers off the street and to trial. The courts also would place nonviolent offenders on probation in a community drug treatment program and then on to prison if they don't successfully complete it.

SEE HB 1147, Page 2

LEGISLATIVE
UPDATE

Several measures that would affect the law enforcement community have been approved by the legislature. If signed by the governor, these bills will become effective Aug. 28 unless a bill contains an emergency clause.

Designates
bills that have
been signed.



SENATE BILLS

ZERO TOLERANCE LAW
CLARIFIED

SB 634 closes a loophole that allowed teens caught drinking and driving to keep their drivers licenses after they refused to take a breath test. The measure allows police to stop motorists under age 21 and require them to take a breath test if there are reasonable grounds that a driver has a BAC of at least 0.02. The bill also adds crimes such as vehicular manslaughter to the definition of "intoxication-related traffic offense" so that they can be used to determine prior and persistent offender status. The bill contains an emergency clause.

PROCEDURAL RIGHTS OF LAW
ENFORCEMENT OFFICERS

Deputy Sheriffs: SB 659 grants a dismissed deputy sheriff the right to a hearing before a board appointed by the sheriff. The sheriff retains final decision-making authority. A written notice of grounds for dismissal will have to be provided to the deputy sheriff.

Highway Patrol: Several procedural changes are made by SB 659 for disciplined patrol members:

■ The hearing board will consist of six troopers not in the accused officer's troop. The board will have one nonvoting captain, one sergeant and four officers of the same rank as the accused.

■ The accused will receive a copy of the written complaint.

■ The accused will have the right to counsel at any interrogation.

■ The accused may respond in writing to any written complaint or other evidence. However, the patrol superintendent may delay disclosing written notice of the complaint if he determines it would jeopardize the investigation.

PROBATION AND PAROLE

SB 478 allows probation and parole officers certified to carry firearms to carry them at any time.

HB 1147 PROVISIONS

CONTINUED from Page 1

■ **Registering chemicals:** Meth-making chemicals sulfuric acid, iodine and red phosphorus are added to the list of precursor chemicals regulated by the state Department of Health. These over-the-counter products must be registered when sold in bulk.

■ **MEG Units:** A Missouri border county can cooperate with an adjoining county across state lines to enforce drug laws. Local governments in the 45 Missouri counties would be allowed to set up interstate agreements to enforce drug laws with their counterparts across state lines. These interstate drug enforcement groups would have the same powers to investigate and arrest as other law enforcement offices in Missouri.

■ **Other provisions:** The act amends the crime of endangering the welfare of a child, increases the threshold for stealing from \$150 to \$750 (Class C felony), and creates the crime of unlawful endangerment of property — meth lab sites would be one target. It also creates a Controlled Substances Cleanup Fund to clean up meth labs.



Front Line Report is published on a periodic basis by the Missouri Attorney General's Office, and is distributed to law enforcement officials throughout the state.

■ **Attorney General:** Jeremiah W. (Jay) Nixon

■ **Editor:** Ted Bruce, Deputy Chief Counsel for the Criminal Division

■ **Production:** Office of Communications
Office of the Attorney General
P.O. Box 899, Jefferson City, MO 65102

ANIMAL ABANDONMENT

SB 596 adds animal abandonment to the crime of animal neglect. A person found guilty of animal neglect or abandonment may be required to pay for the care or disposal of animals.

TEACHER DECERTIFICATION

SB 753/HB 1169 improves the procedure for revoking a teacher's license if a teacher has been convicted of a felony.

HOUSE BILLS**DOMESTIC VIOLENCE REPORTING AND SENTENCING**

HB 1918 requires law enforcement agencies to report whether a homicide was related to domestic violence. It also increases the penalty for domestic violence offenders who commit multiple offenses.

LEGISLATIVE UPDATE**JUVENILE COURT PERSONNEL**

HB 971 brings juvenile court personnel into the state employee system.

CONCEALED WEAPONS

HB 1891 authorizes a statewide referendum in April 1999 in which voters will decide whether Missourians who pass a criminal background check and have 12 hours of training in handgun safety should have the right to carry hidden weapons.

THREE STRIKES LAW

HB 1508 replaces the term "remand" with the term "commitment" so that an offender sent to the Department of Corrections for the third time must serve 80 percent of his sentence. The bill contains an emergency clause.

**BILLS THAT DID NOT PASS**

Drunken driving: SB 662 would have lowered the legal blood-alcohol limit for drunken driving to 0.08 from 0.10 percent.

Police residency: HB 1308 would have prohibited the city of St. Louis from requiring officers to live in the city.

HB 1405 toughens law on sexual predators

■ Sexual predators:

HB 1405 authorizes the state to use a civil commitment procedure to keep violent sexual predators locked up after their prison sentences expire.

Sexually violent offenses are defined as forcible rape or sodomy, statutory rape or sodomy in the first degree and first-degree child molestation.

When the Department of Mental Health or Corrections notifies the AG's Office that a person may be a sexual predator, the attorney general

will appoint a five-member prosecutor's review committee to determine if there is probable cause to believe the person is a predator.

If probable cause is found, the court will then determine whether, beyond a reasonable doubt, the person is a sexual predator.

The person then will be committed to the Department of Mental Health until the person is considered safe for release.

■ Sex offender registration:

HB 1405 also updates the sex offender registration law. It requires certain offenders to verify registration information every 90 days with law enforcement. It also requires an offender to include a brief description of the crime when he registers. That information will be available to the public on request.

During registration, any offender who includes false information or fails to verify information commits a Class A misdemeanor. A second or subsequent violation is a Class D felony.

LEGISLATIVE
UPDATE

Sunshine Law revisions affect incident reports

HB 1095 will make several changes in the open meetings and records law, including a significant change affecting police records.

Currently under Section 610.200, law enforcement agencies must maintain or create incident reports that contain:

1. The time, date and location of the incident,
2. The name and age of the victim,
3. The factual circumstances (i.e., description) of the incident, and
4. A general description of injuries, property or weapons involved.

Under the new law, only part of the incident report — time, date and location of incident and victim's name and age — is a truly "open" record. The new law says that for the first 60 days following an incident or accident, only an "interested party" is entitled to details of the incident — the factual circumstances and injuries.

An interested party includes police; people involved in the

incident and their lawyers, doctors and insurance companies; and the news media.

Thus, the new legislation creates four types of police reports (arrest reports, complete incident reports, incomplete incident reports, and investigative reports) and three categories of records (open, closed, and "semi-closed").

This change does not hamper law enforcement from properly investigating and reporting criminal cases. It does, however, complicate the process for disclosing reports since incident reports are now only partially open to anyone.

Law enforcement agencies will have to either create two versions of each incident report or delete the "closed" portions when a non-interested party requests a copy.

OTHER PROVISIONS

■ NGRI cases to Central Registry:

Persons found not guilty by reason of insanity will be required to be fingerprinted and their records maintained in the Central Registry like all other criminal records. Official records pertaining to NGRI cases shall be closed but shall be accessible to law enforcement agencies, child care agencies, residential care facilities and in-home service providers.

■ **Opens more records, bodies:** City councils, county commissions and other governmental bodies will be required to reveal individual votes cast in closed-door meetings.

Also, details of legal settlements must be made available to the public unless a judge rules that the adverse effects on the plaintiff outweigh the public interest. The dollar amount of the settlement paid by the public body would have to be disclosed.

The bill broadens the definition of a public body to include advisory committees and requires governments to prove the actual cost of copying documents to keep the public from being unfairly charged.

Top court rules for police in liability case

THE U.S. SUPREME COURT unanimously ruled that police usually cannot be forced to pay damages under a federal civil rights law for killing or injuring someone during a high-speed chase.

The May 26 ruling overturns a decision by the 9th U.S. Circuit Court of Appeals, which had ruled that an officer could be held liable for the death of a California teen-ager killed by the officer's car during a high-speed chase.

The 9th Circuit said the officer had

acted with "reckless disregard" and violated the teen's constitutional rights.

The Supreme Court justices said, however, that police can be held liable only when their actions would "shock the conscience."

"We hold that high-speed chases with no intent to harm suspects physically or to worsen their legal plight do not give rise to liability under the Fourteenth Amendment" and federal civil rights law, Justice David H. Souter wrote for the court.

Historically, a plaintiff has not been

able to sue in federal court for an alleged civil rights violation arising out of pursuits. These suits have been filed in state courts as negligence claims.

Missouri law greatly protects officers from such lawsuits. Generally, if an officer was using emergency equipment such as sirens, then the officer had "official immunity" from suit except in cases of gross misconduct. That state protection will continue following the Supreme Court ruling.

Pat down, frisk searches: A refresher course

TO REINFORCE when a peace officer lawfully can conduct a pat-down or frisk, here is a primer to help officers remain in compliance with the law, protect the rights of citizens, and avoid litigation.

Search limited: The law clearly states that a pat-down or frisk is a search limited to weapons. While other items may sometimes be lawfully detected, the only items an officer may lawfully seek are weapons.

When a frisk is legal: An officer must have specific, reasonable suspicion that the individual may be armed. You may not frisk everyone you stop or everyone you ask to sit in the patrol car.

Situations that may cause reasonable suspicion:

- A driver is reaching under his seat as you approach the vehicle,
- A bulge in the driver's pocket looks like it might be a weapon.

■ A local officer has warned that the individual usually carries a gun.

Specific suspicion required: The suspicion must be specific to an individual with whom you are dealing. Just because you were told there are tiny guns that can fit into a pants pocket does not authorize you to search everyone based on a fear that "someone" may carry a gun.

What can be removed: If reasonable suspicion exists, you may frisk by patting down the person and feeling for a weapon. Any object that you reasonably believe might be a weapon can be removed — only to determine if it is a weapon. If the item is not a weapon, the general rule is you must leave it alone since a frisk is limited to a search for weapons.

Removing items under "plain feel" doctrine: Under the plain feel doctrine, other items of evidence may also be removed, but only if it is immediately apparent that the items are contraband or evidence.

Frisking a motorist: If you have reasonable suspicion to conduct a frisk, you can pat down the individual and frisk the area of the car within the individual's immediate reach. You cannot search the entire interior of a car, only the area where the frisked individual could reach for a weapon. This also can be done after the person has been removed from the vehicle. Again, the search is lawfully limited to weapons.

Moving motorist in or out of car: To minimize the dangers of frisks, the law allows an officer to order a motorist in or out of a vehicle. This does not mean, however, that you can order the person into your patrol car but first make them submit to a frisk. That violates the Constitution.

No automatic frisk: The courts do not recognize any "automatic frisk" rule that allows you to frisk everyone who enters your patrol car or everyone you stop.

May 1998

FRONT LINE REPORT

"Legal high" claim not true as more use new drug

A NEW DRUG, gamma-hydroxybutyrate, is appearing on the street, in private clubs and in the bodybuilder scene as users tout the "legal high" they get from it. GHB also is being promoted for weight loss and as a sedative to replace l-tryptophan.

Despite the "legal" use claims, GHB is categorized as a prescription drug under Title 21, U.S. Code, Section 353(b)(1)(B).

Users generally drink alcohol followed by a "capful" of GHB, which usually is sold as a liquid in a plastic water bottle. A capful costs \$5 to \$10.

The half-life of GHB is about 20-60 minutes, so the user must get a new

hit every 45-60 minutes to sustain the effects.

Combining GHB with alcohol plus a stimulant or marijuana allows the user to remain conscious throughout the "buzz" and enjoy its effects.

The GHB also has a reputation for relaxing inhibitions and increasing the libido.

The pattern of use along with the environment in which it is used increases the risk of GHB becoming a "date rape drug." This may already be the case.

GHB facts

Street names:

Liquid X
Saltwater
Easy Lay
Scoop [West Coast]

Symptoms:

Classic CNS depressant
1-2 hours life
Almost immediate onset of HGN
Muscle tremors, twitches
Sweat profusely (like PCP)
Nausea, vomiting